International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Concluding observations on the report submitted by Gabon under article 29, paragraph 1, of the Convention*

1. The Committee on Enforced Disappearances considered the report submitted by Gabon under article 29 (1) of the Convention (CED/C/GAB/1) at its 221st and 222nd meetings (CED/C/SR.221 and 222), held on 5 and 6 September 2017. It adopted the following concluding observations at its 232nd meeting, held on 13 September 2017.

A. Introduction

2. The Committee welcomes the report submitted by Gabon under article 29 (1) of the Convention. The Committee wishes to thank the Ambassador in Geneva for her attendance and the information she provided. It also wishes to thank the State party for the written replies (CED/C/GAB/Q/1/Add.1) to the list of issues (CED/C/GAB/Q/1), though incomplete. In addition, the Committee notes that the core document (HRI/CORE/1/Add.65/Rev.1) has not been updated since 1998.

3. The Committee finds especially regrettable the absence, announced on the very day of the dialogue, of the State party's delegation from the capital, a list of which had been transmitted in a note verbale. The Committee stresses that the State party thus lost an opportunity to fully present its report, to add vital information and to provide the Committee with replies.

B. Positive aspects

4. The Committee welcomes the fact that the State party has ratified almost all of the main United Nations human rights instruments and some of the related optional protocols, in particular the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2010, as well as the Rome Statute of the International Criminal Court. It commends the Government on having extended a standing invitation to all the special procedures mandate holders in 2012.

C. Principal subjects of concern and recommendations

5. The Committee considers that, at the time of the drafting of the present concluding observations, the legislation in force in the State party did not comply with the Convention. While noting the fact that the State party has embarked on a legislative process designed to reform the Criminal Code in order to implement the Convention, the Committee recommends that the State party take account of the recommendations contained in these

* Adopted by the Committee at its thirteenth session (4-15 September 2017).

concluding observations. These recommendations have been made in a constructive and cooperative spirit, with a view to strengthening as soon as possible the State party's legislation and the manner in which it is implemented by the authorities in order to ensure that the rights and obligations set out in the Convention are fully observed.

General information

Competence of the Committee under articles 31 and 32 of the Convention

6. The Committee takes note that the State party is considering the issue of the competence of the Committee to receive individual and inter-State communications. However, it regrets that the State party has not yet made the declarations envisaged under articles 31 and 32.

7. **The Committee invites the State party to recognize without delay the Committee's competence under article 31 and 32 of the Convention, with a view to strengthening the framework for protection against enforced disappearances that is provided for in the Convention.**

National human rights institution

8. The Committee welcomes the information that a bill on reforming the National Human Rights Commission is in the process of being adopted in the parliament. It notes with concern, however, that, despite its having been in place since 2015, the Commission does not seem to be operational to this day and has not requested accreditation from the Global Alliance of National Human Rights Institutions.

9. **The Committee recommends that the State party expedite the adoption of the bill on the reform of the National Human Rights Commission and encourages the State party to continue its efforts to ensure that the Commission complies with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) and to provide it with adequate human and financial resources so that it may function properly with a view to facilitating its timely accreditation with the Global Alliance of National Human Rights Institutions.**

Definition and characterization of enforced disappearance as an offence (arts. 1-7)

Non-derogability of the prohibition of enforced disappearance

10. The Committee is concerned that there is no clear recognition of the principle of non-derogability in the State party's domestic law expressly establishing that no exceptional circumstances whatsoever may be invoked to derogate from the prohibition on enforced disappearance (art. 1).

11. **The Committee recommends that the State party take the necessary steps to explicitly introduce an absolute ban on enforced disappearance into its domestic legislation in keeping with article 1 (2) of the Convention.**

Incorporation of the definition and characterization of enforced disappearance as an offence in the Criminal Code

12. The Committee notes the State party's stated intention to incorporate the definition and characterization of enforced disappearance as an offence in the Criminal Code. It is concerned, however, that enforced disappearance is not currently defined or characterized as an offence in the Criminal Code as required under articles 2 and 4 of the Convention. It notes that, in the absence of a definition and characterization of enforced disappearance as an offence, the State party report refers, with regard to certain matters, to general laws and regulations and criminal legislation governing other offences, such as torture, cruel or inhuman treatment, false imprisonment and the detention, confinement or concealment of a minor, which do not, however, constitute the offence of enforced disappearance. The

Committee recalls that referring to several offences and the rules governing them is not sufficient to discharge the State party's obligation because the offence of enforced disappearance is not a series of distinct offences but a separate offence committed by State officials or by individuals or groups of individuals acting with the authorization, support or acquiescence of the State, in accordance with the definition contained in article 2 of the Convention. Furthermore, the Committee regrets that it did not receive relevant information on the specific characterization of enforced disappearance as a crime against humanity in line with the provisions of article 5 of the Convention (arts. 2-8).

13. **The Committee recommends that the State party expedite the review of the Criminal Code with a view to implementing the Convention. In this connection, it urges the State party to: (a) define and characterize enforced disappearance as a separate offence, in accordance with article 2 of the Convention, punishable by appropriate penalties that take into account its extreme seriousness; and (b) specifically characterize enforced disappearance as a crime against humanity in the cases provided for by article 5 of the Convention.**

14. **The Committee also recommends that the State party (a) provide for specific mitigating and aggravating circumstances in line with article 7 (2) of the Convention; (b) ensure that the mitigating circumstances do not give rise to a lack of appropriate punishment; and (c) ensure that, once enforced disappearance has been made an offence, it is not subject to limitation or, if it is, provide for a long period of limitation commensurate with the extreme seriousness of the offence and, given the continuous nature of enforced disappearance, for the period to begin once the offence has ended.**

Criminal responsibility of superiors

15. The Committee notes that the law in force in the State party does not satisfy the obligations under article 6 (1) (b) of the Convention with regard to the criminal responsibility of superiors (art. 6).

16. **The Committee recommends that the State party, in providing for a definition and the criminalization of enforced disappearance in the Criminal Code, explicitly establish the criminal responsibility of superiors in keeping with article 6 (1) (b) of the Convention.**

Order from a superior

17. While it notes the information provided in the report that Gabonese criminal law applies the theory of "rational obedience", the Committee remains concerned that it is possible to invoke an order or instruction to justify a crime of enforced disappearance (art. 6).

18. **The Committee recommends that the State party, in providing for a definition and the criminalization of enforced disappearance in the Criminal Code, bring the Code into conformity with article 6 (2) of the Convention.**

Trafficking in persons

19. The Committee is concerned at reports of the scale of trafficking in persons, both foreign and Gabonese nationals, especially women and children, and stresses the particular vulnerability of these persons to being placed outside the protection of the law and subjected to enforced disappearance, in particular when they are under the control of non-State actors. The Committee notes the information that a bill is to be enacted but remains concerned at the current inadequacy of the legal framework to address this extremely serious situation (arts. 2, 3, 12, 14 and 25).

20. **The State party should, in cooperation with countries of origin and destination and victims of trafficking, redouble its efforts to prevent trafficking in persons and disappearances. Specifically, the State party should amend its legal framework in order to ensure that all forms of trafficking in persons are actually punished.**

Criminal responsibility and judicial cooperation with regard to enforced disappearance (arts. 8-15)

Extraterritorial jurisdiction in cases of enforced disappearance

21. The Committee notes the information provided in the State party report regarding crimes and offences committed abroad. It is concerned, however, that current legislation is not fully in line with the obligations under articles 9 (2) and 11 (arts. 9 and 11).

22. **The Committee recommends that the State party adopt the necessary measures to ensure that the national courts can exercise their power to adjudicate cases of enforced disappearance in keeping with the obligations under article 9, in particular the principle of *aut dedere aut judicare*, and article 11 of the Convention.**

Military courts

23. The Committee notes that the military courts have jurisdiction in cases of enforced disappearance committed by military personnel in the exercise of their duties. It recalls its position that, as a matter of principle, the military courts do not have the independence or impartiality required by the Convention to adjudicate cases of human rights violations such as enforced disappearance (art. 11).

24. **The Committee, recalling its statement on enforced disappearances and military jurisdiction (A/70/56, annex III), recommends that the State party take the necessary legislative and other measures to ensure that all cases of enforced disappearance remain outside the jurisdiction of the military courts and that they can be investigated and tried only by the ordinary courts.**

Investigations and alleged arrests and disappearances during the post-election crisis

25. The Committee notes the information provided by the State party on the events of 31 August 2016, according to which no disappearances or complaints were brought to the attention of the judicial authorities or the police. It recalls the referral by Gabon to the International Criminal Court on 21 September 2016. The Committee is, nonetheless, concerned by disturbing allegations of cases of disappearance. It recalls that, where there are reasonable grounds to believe that a person has been the victim of enforced disappearance, the State party has an obligation to launch a thorough and impartial investigation, including in the absence of a formal complaint, and regrets not having received specific information from the State party in this regard (art. 12).

26. **The State party should adopt measures to ensure that a thorough and impartial investigation into the events of 31 August 2016 is conducted immediately, even in the absence of a formal complaint, and that the findings are made public.**

27. **In addition, the Committee encourages the State party to: (a) ensure that the Code of Criminal Procedure provides for the unrestricted participation of victims of enforced disappearance in judicial procedures relating to such acts; (b) consider providing specific training to some members of the criminal police and the judiciary in order to conduct, where appropriate, investigations into alleged cases of enforced disappearance and to initiate criminal proceedings in such cases; (c) guarantee the effective coordination and cooperation of all bodies responsible for the investigation and ensure that they have the necessary support and technical, financial and human resources to discharge their functions diligently and effectively; and (d) adopt all necessary measures, in line with article 12 (4) of the Convention, to ensure that persons suspected of having committed the offence of enforced disappearance and the members of their units do not take part in the investigation and are not themselves or through a third party in a position to influence, directly or indirectly, the course of the investigation.**

Protection of complainants, witnesses, relatives of the disappeared person and their defence counsel as well as persons participating in the investigation

28. The Committee notes the very general information provided to it regarding the protection of various categories of complainants and witnesses but remains concerned that the law does not fully satisfy the obligations under article 12 (1) of the Convention (art. 12).

29. **The Committee recommends that the State party take the necessary steps to ensure that domestic law effectively guarantees the protection of all the categories of persons referred to in article 12 (1) of the Convention against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.**

Measures to prevent enforced disappearances (arts. 16-23)

Non-refoulement

30. The Committee regrets that it did not receive detailed information on the mechanisms in place and the criteria applied as part of expulsion, return, surrender or extradition procedures to assess and verify the risk that the person concerned runs of becoming a victim of enforced disappearance. It notes that domestic legislation does not appear to explicitly prohibit the expulsion, return, surrender or extradition of a person where there are substantial grounds to believe that he or she is at risk of becoming a victim of enforced disappearance (art. 16).

31. **The Committee recommends that the State party consider introducing into domestic law an explicit ban on the expulsion, return, surrender or extradition of persons where there are substantial grounds to believe that they are at risk of becoming victims of enforced disappearance. It also recommends that the State party take the necessary steps to ensure that the principle of non-refoulement is respected in practice, including by carrying out an individualized assessment prior to expulsion, return, surrender or extradition in order to determine whether there are substantial grounds to believe that the person concerned is at risk of becoming a victim of enforced disappearance.**

National preventive mechanism

32. The Committee welcomes the ratification by the State party of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2010; nevertheless, it is concerned that the State party has yet to establish a national preventive mechanism (art. 17).

33. **The Committee recommends that the State party take all necessary steps to establish a national preventive mechanism and provide it with sufficient financial, human and technical resources to effectively carry out its mandate.**

Secret detention and fundamental legal safeguards

34. The Committee remains concerned at the lack of an explicit ban and effective safeguards against secret detention in the State party. It is further concerned by reports that persons who are detained in police stations or other detention facilities do not systematically enjoy the fundamental legal safeguards provided for in article 17 of the Convention, as demonstrated, for example, by the one-hour time limit on meetings with a lawyer. In addition, the Committee regrets that it did not receive any information on whether registers were in full compliance with article 17 (3) of the Convention (arts. 17, 18, 20 and 22).

35. **The State party should take all necessary steps to guarantee that no one is held in secret detention, including by ensuring that all persons deprived of their liberty are afforded, de jure and de facto, from the outset of the deprivation of liberty, all the fundamental legal safeguards set out in article 17 of the Convention and other human rights instruments to which Gabon is a party. In particular, the State party should guarantee that: (a) all persons deprived of their liberty have reasonable access to a**

lawyer from the outset of their deprivation of liberty and can communicate without delay with their relatives or any other person of their choosing and, in the case of foreign nationals, with their consular authorities; (b) all persons with a legitimate interest have prompt and easy access to, at a minimum, the information listed in article 18 (1) of the Convention, including while in police custody; (c) all deprivations of liberty, without exception, are entered in the register and/or standard files containing at the very least the information required under article 17 (3) of the Convention; and (d) registers and/or the files of persons deprived of their liberty are maintained and updated promptly with precise data, are subject to regular checks and, in the event of irregularities, the officials responsible are duly punished.

Measures to provide reparation and to protect children against enforced disappearance (arts. 24 and 25)

Right to prompt, fair and appropriate reparation and compensation

36. The Committee notes the general information received regarding reparation but remains concerned that the law does not provide for a comprehensive reparation system in line with articles 24 (4) and (5) of the Convention (art. 24).

37. **The Committee recommends that the State party adopt the necessary measures to introduce into domestic law a comprehensive reparation system fully in line with articles 24 (4) and (5) of the Convention and other relevant international provisions, thereby providing for guarantees of non-repetition.**

Legal situation of disappeared persons and that of their relatives

38. The Committee regrets that it has not received any information on: (a) the legal status of disappeared persons whose fate has not been determined; and (b) the legal situation of the relatives of a disappeared person and what rights they have in areas such as financial matters, social protection, family law and property rights (art. 24).

39. **The Committee recommends that the State party take the necessary steps, in compliance with article 24 (6) of the Convention, to introduce appropriate legislation with regard to the legal situation of disappeared persons whose fate has not been determined and that of their relatives, in particular in terms of social protection, financial matters, family law and property rights. In this respect, it encourages the State party to set up a procedure for obtaining a declaration of absence by reason of enforced disappearance.**

Legislation on the wrongful removal of children

40. The Committee regrets the lack of information on the measures to implement article 25 of the Convention and, in particular, to prevent and punish under domestic criminal law the abduction of children and the falsification, concealment or destruction of documents attesting to the true identity of the children referred to in article 25 (1) (a) (art. 25).

41. **The Committee recommends that the State party strengthen its criminal legislation with a view to incorporating as specific offences the acts described in article 25 (1) of the Convention and provide for appropriate penalties that take into account the extremely serious nature of the offences.**

D. Dissemination and follow-up

42. The Committee wishes to recall the obligations undertaken by States when ratifying the Convention and, in this connection, urges the State party to ensure that all the measures it adopts, irrespective of their nature or the authority from which they emanate, are in full accordance with the obligations it assumed when ratifying the Convention and other relevant international instruments. In this regard, the Committee particularly urges the State party to ensure the effective investigation of all enforced disappearances and the full satisfaction of the rights of victims as set forth in the Convention.

43. The Committee further wishes to emphasize the particular cruelty with which enforced disappearances affect the human rights of women and children. Women who are subjected to enforced disappearance are particularly vulnerable to sexual violence and other forms of gender violence. Women members of a disappeared person's family are particularly likely to suffer serious adverse social and economic consequences and be subjected to violence, persecution and reprisals as a result of their efforts to locate their loved ones. Children who are victims of enforced disappearance, either because they themselves were subjected to disappearance or because they suffer the consequences of the disappearance of their relatives, are especially vulnerable to numerous human rights violations, including identity substitution. The Committee therefore places special emphasis on the need for the State party to ensure that gender perspectives and child-sensitive approaches are used in implementing the rights and obligations set out in the Convention.

44. The State is encouraged to disseminate widely the Convention, the text of its report under article 29 (1) of the Convention, its written replies to the list of issues prepared by the Committee and the present concluding observations in order to raise awareness on among the judicial, legislative and administrative authorities, civil society and non-governmental organizations active in the State party and the general public. The Committee further encourages the State party to promote the involvement of civil society in the process of implementing the present concluding observations.

45. In accordance with the Committee's rules of procedure, by 15 September 2018 at the latest, the State party should provide relevant information on its implementation of the Committee's recommendations, as contained in paragraphs 26, 33 and 35.

46. Under article 29 (4) of the Convention and in view of the incomplete nature of the dialogue, the Committee requests the State party to submit, no later than 15 September 2020, specific and updated information on the implementation of all its recommendations and any other new information on the fulfilment of the obligations contained in the Convention, in a document prepared in accordance with paragraph 39 of the guidelines on the form and content of reports under article 29 to be submitted by States parties to the Convention (CED/C/2). The Committee encourages the State party to promote and facilitate the participation of civil society in the preparation of this information.